

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 6, 1999

IN RE:

**PETITION FOR ARBITRATION OF ITC^DELTACOM
COMMUNICATIONS, INC. WITH BELL SOUTH
TELECOMMUNICATIONS, INC. PURSUANT TO
THE TELECOMMUNICATIONS ACT OF 1996**

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**DOCKET NO.
99-00430**

REPORT AND INITIAL ORDER OF PRE-ARBITRATION OFFICER

On June 11, 1999, ITC^DeltaCom Communications, Inc. ("DeltaCom") filed a Petition for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to Section 252(b) of the Telecommunications Act of 1996. BellSouth filed a Response to DeltaCom's petition on July 6, 1999. At a specially scheduled Authority Conference on June 29, 1999, the Directors unanimously accepted this petition for arbitration, appointed themselves as Arbitrators, and directed the General Counsel to either serve as or to designate a pre-arbitration officer.

On July 29, 1999, a Notice scheduling a Pre-Arbitration Conference for August 4, 1999 was sent to both parties. Attached to this Notice of July 29 was an "issues matrix" that included all issues from the arbitration petition as well as questions of clarification which were prepared by staff of the Telecommunications Division ("Staff") of the Tennessee Regulatory Authority ("TRA").

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Pre-Arbitration Conference

The Pre-Arbitration Conference was held on August 4, 1999 before Gary Hotvedt, Counsel, designated as Pre-Arbitration Officer. Appearances were as follows:

For DeltaCom:	H. LaDon Baltimore, Esq.; David I. Adelman, Esq.; Charles (Clay) B. Jones, III, Esq.; Thomas Hyde; Christopher J. Rozycki
For BellSouth:	Guy M. Hicks, Esq.; Thomas B. Alexander, Esq.; Parkey D. Jordan, Esq.; Pat C. Finlen
For TRA Staff:	Darlene Standley; David Foster; Carsie Mundy; Dr. Chris Klein.

At the start of the Conference, the Pre-Arbitration Officer ("PAO") reaffirmed that this proceeding is not a "contested case" as defined by the Uniform Administrative Procedures Act ("UAPA"), and as such, the UAPA does not control nor do parties have any appellate rights in state courts. Specifically, this is an arbitration pursuant to § 252(b) of the Federal Telecommunications Act of 1996, and any relief a party may seek must be via the FCC or the United States District Court. Nevertheless, the UAPA, the Tennessee Rules of Civil Procedure and the Tennessee Rules of Evidence will be relied upon for guidance.

The following other procedural matters were discussed at the Conference, matters that the parties have subsequently agreed upon or have not objected to:

- a) In its Pre-Hearing Brief, DeltaCom states that it "has no objection" to the participation of the TRA Staff during the Arbitration, including Staff directly asking questions during the proceeding itself. This matter was not addressed in BellSouth's Brief as had been requested by the PAO, therefore, BellSouth is deemed to have no objection;

- b) In its Pre-Hearing Brief, DeltaCom “expressly agrees” to abide by the arbitration rules proposed at the Conference (TRA Rules 1220-5-1 through 1220-5-3, Rules of Practice and Procedure Governing Proceedings under Section 252 of the Federal Telecommunications Act of 1996). This matter was not addressed in BellSouth’s Brief as had been requested by the PAO, therefore, BellSouth is deemed to have no objection;
- c) The parties submitted a proposed Protective Order, which was approved by the PAO and entered on August 27, 1999; and
- d) DeltaCom and BellSouth jointly filed an agreement to extend the arbitration period until January 15, 2000.

Schedule

At the Conference, a tentative schedule was arrived at through agreement of the parties. Because: (1) the “issues and party’s position matrix” as originally filed did not include the parties’ positions as had been requested by the PAO; (2) later dates for the proposed hearing have since been settled upon by the parties; and (3) the parties averred that no discovery was needed due to their involvement in similar arbitrations in other states, the PAO has modified the tentative schedule and hereby establishes the following schedule for the resolution of this docket:

October 6, 1999	Pre-Arbitration Officer’s Report with adoption of issues
October 15, 1999	Direct Testimony due
October 22, 1999	Rebuttal Testimony due
November 1, 2 & 3, 1999	Arbitration Hearing

For filing purposes, all documents are to be faxed or hand-delivered by 2:00 PM on the day that they are due. A request was made that the start of the hearing (scheduled for Monday, November 1) be delayed due to the previous night's Halloween celebration. However, the Executive Secretary reaffirmed that a regularly scheduled Authority Conference would be held at 9:00 AM on Tuesday, November 2 and that the hearing of this Arbitration on that day could not commence until the conclusion of the Authority Conference. So as to allow both parties sufficient time to present their case, it is determined that the hearing commence at 9:00 AM on Monday and Wednesday, November 1 and 3, 1999.

Issues Removed by Petitioner

By agreement of the parties, the following issues were removed at the Pre-Arbitration Conference: 2(a)(iii); 2(a)(vi); 2(a)(vii); 2(b)(iv); 2(c)(vii); 2(c)(xi); 2(c)(xii); 2(c)(xiii); 2(c)(xv); 2(c)(xvi); 2(e); 3(a); 3(b); 3(c); 3(d); 3(e); 3(f); 3(g); 3(j); 3(k); 3(l); 3(n); 3(o); 4(b); 4(d); 6(f); 7(a); 7(b); 7(b)(i); 7(b)(iii); 8(a); 8(c) and 8(d). In the Amended Joint Matrix filed September 13, 1999, DeltaCom acknowledged that the following issues had been closed: 2(a)(v); 2(c)(ix); 2(c)(x); 2(d) and 4(c).

Determination of Specific Issues

Since the filing of DeltaCom's petition, the PAO has encouraged the parties to resolve the issues presented, either with new language or language adopted in previous arbitrations. While such resolution reduces the burden on the parties as well as the arbitrators, absent resolution, all remaining issues must be arbitrated pursuant to 47 USC § 252. Therefore, after considering the discussion relative to the specific issues at the Pre-Arbitration Conference, after reviewing the

parties' briefs and analyzing the issues matrix(s), the PAO determines that the following issues are arbitrable and are to be articulated as follows:

Issue 1(a): Should BellSouth be required to comply with performance measures and guarantees for pre-ordering/ordering, resale, and unbundled network elements ("UNEs"), provisioning, maintenance, interim number portability and local number portability, collocation, coordinated conversions and the bona fide request processes as set forth fully in Attachment 10 of Exhibit A to this Petition?

Issue 1(b): Should BellSouth be required to waive any nonrecurring charges when it misses a due date? If so, under what circumstances and for which UNEs?

Issue 2; 2(a)(iv); 2(b)(i) and 6(a) have been combined as follows:

- (a) What is the definition of parity?
- (b) Pursuant to this definition, should BellSouth be required to provide the following and if so, under what conditions and at what rates:
 - (1) Operational Support Systems ("OSS"),
 - (2) UNEs,
 - (3) Access to Numbering Resources
 - (4) An unbundled loop using integrated Digital Loop Carrier ("IDLC") technology; and
 - (5) Priority guidelines for repair and maintenance and UNE provisioning?

Issue 2(a)(i)(1): Should BellSouth be required to provide the specifications to enable ITC^DeltaCom to parse the Customer Service Records (CSRs)? If so, how?

Issue 2(a)(i)(2): Should BellSouth be required to provide a download of the Regional Street Address Guide (RSAG)? If so, how?

Issue 2(a)(ii): Should BellSouth be required to provide changes to its business rules and guidelines regarding resale and UNEs at least 45 days in advance of such changes being implemented? If so, how?

Issue 2(b)(ii): Until the Commission makes a decision regarding UNEs and UNE combinations, should BellSouth be required to continue providing those UNEs and combinations that it is currently providing to ITC^DeltaCom under the interconnection agreement previously approved by this Commission?

Issue 2(b)(iii):

(a) Should BellSouth be required to provide to ITC^DeltaCom the following combinations:

- (1) Loop Port Combinations
- (2) Loop Transport UNE Combinations
- (3) Loop UNE connected to Access Transport

(b) If so, at what rates?

Issue 2(c)(i): Should BellSouth be required to provide NXX testing functionality to ITC^DeltaCom *at parity*? If so, at what rate?

Issue 2(c)(ii): What should be the installation interval for the following loop cutovers:

- (a) Single
- (b) Multiple

Issue 2(c)(iii): BellSouth has offered order coordination; should SL1 orders without order coordination be specified by BellSouth with an a.m. or p.m. designation?

Issue 2(c)(iv): Should the party responsible for delaying a cutover also be responsible for the other party's reasonable labor costs? If so, at what cost?

Issue 2(c)(v): Should BellSouth be required to designate specific UNE center personnel for coordinating orders placed by ITC^DeltaCom?

Issue 2(c)(vi): Should each party be responsible for the repair charges for troubles caused or originated outside of its network? If so, how should each party reimburse the other for any additional costs incurred for isolating the trouble to the other's network?

Issue 2(c)(viii): Should BellSouth be responsible for maintenance to HDSL and ADSL compatible loops provided to ITC^DeltaCom? If so, at what rate?

Issue 2(c)(xiv):

- (a) Should BellSouth be required to coordinate with ITC^DeltaCom 48 hours prior to the due date of a UNE conversion?
- (b) If BellSouth delays the scheduled cutover date, should BellSouth be required to waive the applicable non-recurring charges?
- (c) Should BellSouth be required to perform dial tone tests at least 48 hours prior to the scheduled cutover date?

Issue 2(f): Should BellSouth be required to establish Local Number Portability (LNP) cutover procedures under which BellSouth must confirm with ITC^DeltaCom that every port subject to a "disconnect order" is worked at one time?

Issue 2(g): Should "order flow-through" be defined in the interconnection agreement, and if so, what is the definition?

Issue 3(1): Should BellSouth be required to pay reciprocal compensation to ITC^DeltaCom for all calls that are properly routed over local trunks, including calls to Information Service Providers (“ISPs”)?

Issue 3(2): What should be the rate for reciprocal compensation per minute of use, and how should it be applied?

Issue 3(h): If ITC^DeltaCom needs to reconnect service following an order for a disconnect, should BellSouth be required to reconnect service within 48 hours?

Issue 3(i): Should BellSouth be required to maintain UNE/LCSC hours from 6 a.m. – 9 p.m.?

Issue 3(m): What type of repair information should BellSouth be required to provide to ITC^DeltaCom such that ITC^DeltaCom can keep the customer informed?

Issue 4(a): Should BellSouth provide cageless collocation to ITC^DeltaCom 30 days after a firm order is placed?

Issue 5: Should the parties continue operating under existing local interconnection arrangements?

Issue 6(b): What are the appropriate recurring and nonrecurring rates and charges for:

- (1) two-wire ADSL/HDSL compatible loops,
- (2) four-wire ADSL/HDSL compatible loops,
- (3) two-wire SL1 loops,
- (4) two-wire SL2 loops, or
- (5) two-wire SL2 loop Order Coordination for Specified Conversion Time?

Issue 6(c): Should BellSouth be permitted to charge ITC^DeltaCom a disconnection charge when BellSouth does not incur any costs associated with such disconnection?

Issue 6(d): What should be the appropriate recurring and nonrecurring charges for cageless and shared collocation in light of the recent FCC Advanced Services Order No. FCC 99-48, issued March 31, 1999, in Docket No. CC 98-147?

Issue 6(e): Should BellSouth be permitted to charge ITC^DeltaCom for conversions of customers from resale to unbundled network elements? If so, what is the appropriate charge?

Issue 7(b)(ii): What *tariff* procedures should ITC^DeltaCom and BellSouth adopt for meet-point billing?

Issue 7(b)(iv): Which party should be required to pay for the Percent Local Usage (PLU) and Percent Interstate Usage (PIU) audit, in the event such audit reveals that either party was found to have overstated the PLU or PIU by 20 percentage points or more?

Issue 8(b): Should the losing party to an enforcement proceeding or proceeding for breach of the interconnection agreement be required to pay the costs of such litigation?

Issue 8(e): Should language covering tax liability be included in the interconnection agreement, and if so, should that language simply state that each Party is responsible for its own tax liability?

Issue 8(f): Should BellSouth be required to compensate ITC^DeltaCom for breach of material terms of the contract?

DeltaCom and BellSouth are to file testimony on each of these issues. This testimony should state the specific issue number and issue (as memorialized above), followed immediately by a specific remedy and any supporting justification.

Findings

The PAO finds that the following issues relate specifically to 47 USC § 251 (c), regarding interconnection that is equal in quality on rates, terms and conditions that are reasonable: Issues 1(a), 1(b), 2(c)(vi), 2(c)(xiv)(b), 8(b) and 8(f) (relative to certain remedies, including performance measures, cost reimbursement, attorneys' fees and liquidated damages). Therefore, they are appropriate for arbitration.

Relative to Issue 3(1) and 3(2), the Pre-Arbitration Officer finds that pursuant to 47 USC § 251 (b)(5), matters related to reciprocal compensation are appropriate for arbitration.

The PAO finds that DeltaCom's rewording of Issue 3(m) in the September 13 filing and DeltaCom's proposed questions (a, b, c, and d) under Issue 5 in the Issues Matrix of August 31 are expansions rather than clarifications of these issues as originally presented in the petition, and as such, are rejected. Section 252 (b)(4)(A) limits the Arbitrators to consider the issues as presented, allowing for clarification but not for expansion. Therefore, the issues as originally presented in the petition and restated herein are adopted for this proceeding.

Issues 2(b)(ii), 2(b)(iii) and 6(e) relate to nondiscriminatory access to network elements. The FCC News Release regarding the FCC's ordered UNEs states: "[t]he Order permits state commissions to require incumbent LECs to unbundle additional elements as long as the obligations are consistent with the requirements of section 251 and the national policy framework instituted in this Order."¹ Because the states have been given the latitude to order additional UNEs, and 47 USC § 251 (c)(3) requires access to UNEs, the PAO finds these issues are appropriate for arbitration.

¹ News Release, FCC, September 15, 1999, page 4.

Relative to Issue 2(c)(i) and 7(b)(ii), the PAO finds that the additional language set forth (in italics) in the statement of those issues above, clarifies and does not unduly expand these issues. Furthermore, both parties agreed to these issues as reworded during the Pre-Arbitration Conference.

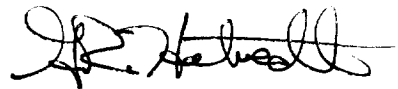
Relative to Issue 2(b)(iii), the PAO finds that this clarification suggested by DeltaCom at the Conference does not unduly expand the issue, and further, it provides the Arbitrators with the necessary specificity required for an appropriate determination.

Relative to Issue 1(a), the PAO finds that DeltaCom's position as originally stated in its petition more specifically reflects the issue than the proposed alternative, and the PAO hereby adopts the original language for use in this proceeding.

Relative to Issue 2(c)(iii), the PAO finds that DeltaCom's position as originally stated in its petition, as clarified slightly herein, adequately addresses the issue without undue expansion; therefore the PAO hereby adopts DeltaCom's proposed language for use in this proceeding.

IT IS THEREFORE ORDERED THAT:

1. The schedule as set forth in this Report is hereby adopted;
2. The issues as set forth in this Report are hereby adopted for arbitration;
3. DeltaCom and BellSouth are directed to file testimony on any such issues as follows: all testimony should state the specific issue number and issue as set forth in this Report, followed immediately by a specific remedy and any supporting justification;
4. Upon written motion, this Initial Order may be appealed to the Arbitrators within ten (10) days from its entry; and
5. If no party has appealed this Initial Order, after ten (10) days this Initial Order will become final.



Gary Hotvedt, Pre-Arbitration Officer

ENTERED: October 6, 1999

ATTEST:



K. David Waddell, Executive Secretary

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